

Below is an Opinion of the Court.

  
RANDALL L. DUNN  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In Re: ) Bankruptcy Case  
RYAN CHRISTOPHER YARBER ) No. 14-32582-rld7  
ALLANIA SHARDAY YARBER, )  
Debtors. ) MEMORANDUM OPINION

The chapter 7<sup>1</sup> trustee Stephen Arnot ("Trustee") objected ("Objection") to the exemption claimed by the debtors Ryan and Allania Yarber (collectively, "Debtors") in an \$8,500 bail bond deposit ("Deposit") made prepetition to the Washington County Sheriff's office. The parties filed legal memoranda and a "Stipulated Statement of Undisputed Material Facts" ("Stipulated Facts") with respect to this contested matter. At a hearing on the Objection on October 21, 2014 ("Hearing"), after confirming some additional facts, the court overruled

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<sup>1</sup> Unless otherwise indicated, all chapter and section references are to the federal Bankruptcy Code, 11 U.S.C. §§ 101-1532; all "Rule" references are to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037; and all "Civil Rule" references are to the Federal Rules of Civil Procedure.

1 the Objection orally. This Memorandum Opinion sets forth the court's  
2 findings of fact and conclusions of law under Civil Rule 52(a),  
3 applicable with respect to this contested matter under Rules 7052 and  
4 9014.

5 FACTUAL BACKGROUND

6 The relevant facts are few and undisputed. The Debtors filed  
7 their chapter 7 petition on May 2, 2014. In the schedules filed  
8 contemporaneously with their petition, the Debtors listed and clearly  
9 identified the Deposit on their Schedule B and claimed an exemption in  
10 the Deposit in their Schedule C under § 522(d)(5).<sup>2</sup> The Debtors  
11 subsequently amended their Schedules B and C on July 17, 2014, but again,  
12 clearly identified the Deposit on their amended Schedule B and claimed  
13 the Deposit as exempt under § 522(d)(5) in their amended Schedule C.

14 In the meantime, on July 7, 2014, the Trustee filed the  
15 Objection, arguing that under § 522(g), the Debtors could not exempt the  
16 Deposit voluntarily transferred to Washington County prepetition.  
17 Section 522(g)(1) provides in relevant part that:

18 [T]he debtor may exempt . . . property that the  
19 trustee recovers under [various sections] of this  
20 title, to the extent that the debtor could have  
21 exempted such property under subsection (b) of this  
22 section if such property had not been transferred, if  
- (1)(A) such transfer was not a voluntary transfer of

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23 <sup>2</sup> The Debtors consistently claimed federal exemptions under  
24 § 522(d) in their Schedule C, as authorized under current Oregon law.  
25 See ORS § 18.300. Section 522(d)(5) provides an exemption for "[t]he  
26 debtor's aggregate interest in any property, not to exceed in value  
\$1,225 plus up to \$11,500 of any unused amount of the exemption provided  
under paragraph (1) of this subsection." There is no issue in this case  
as to the amount of the Deposit fitting within the § 522(d)(5) exemption  
amount limits.

1           such property by the debtor; and (B) the debtor did  
2           not conceal such property . . . .

3   In light of the Debtors' disclosure of the Deposit from day one in their  
4   schedules, concealment is not an issue. Accordingly, the focus is on  
5   whether the Debtors' prepetition transfer of the Deposit to the  
6   Washington County Sheriff's office was voluntary.

7           In their Response to the Objection filed on July 28, 2014, the  
8   Debtors argued that a debtor's exemption claims should be interpreted  
9   liberally and argued that, "Deposit of a bail bond with a court or jail  
10   is not a transfer to a creditor. Bail is simply an amount of money  
11   deposited or pledged to a court to persuade the court to release a  
12   defendant from custody and to secure the defendant's appearance at all  
13   required hearings and trial." See Docket No. 15, at 2. The Debtors  
14   analogized the Deposit to an exempt security deposit held by a landlord,  
15   citing Sticka v. Casserino (In re Casserino), 379 F.3d 1069 (9th Cir.  
16   2004).

17           The Trustee filed a Reply on September 16, 2014, noting that  
18   there was no dispute that the Debtors had transferred the Deposit to  
19   Washington County and argued that by voluntarily transferring the  
20   otherwise exempt Deposit, the Debtors effectively waived their exemption  
21   claim. See Fox v. Smoker (In re Noblit), 72 F.3d 757, 758 (9th Cir.  
22   1995). The Trustee further argued that he could recover the Deposit for  
23   the benefit of the bankruptcy estate under § 542, even though, as yet, he  
24   had not done so. Finally, the Trustee argued that the Ninth Circuit's  
25   decision in In re Casserino was both "factually inapposite" and not  
26   relevant to the legal issues addressed in the Objection. See Docket No.

1 20, at 1-2.

2 The parties filed the Stipulated Facts on September 26, 2014.  
3 See Docket No. 24.

4 At the Hearing, counsel for the Debtors confirmed, without  
5 dispute from the Trustee, that the Debtors paying the Deposit by  
6 certified funds to the Washington County Sheriff's office on or about  
7 June 13, 2013, was the only way that Mr. Yarber could avoid being  
8 incarcerated on a criminal claim, that subsequently was dropped.

9 JURISDICTION

10 I have jurisdiction to resolve the issues raised by the  
11 Objection under 28 U.S.C. §§ 1334, 157(b)(1) and 157(b)(2)(B).

12 DISCUSSION

13 The Debtors do not contest that the Trustee would have the  
14 authority to recover the transfer of the Deposit under § 542, and it is  
15 undisputed that the Debtors did not conceal either the Deposit or its  
16 transfer. Therefore, the only issue for the court to decide is whether  
17 the Debtors' transfer of the Deposit to the Washington County Sheriff's  
18 office prepetition was "voluntary" for purposes of § 522(g)(1)(A).

19 I cannot find that transferring the Deposit to the sheriff's  
20 office specifically to keep Mr. Yarber from being incarcerated  
21 constituted a voluntary transfer. There was nothing about the transfer  
22 of the Deposit that was voluntary other than the fact that the Debtors  
23 made it. I therefore conclude that it was not voluntary.

24 The term "voluntary" with respect to transfers is not defined  
25 in the Bankruptcy Code; so, its interpretation varies depending on the  
26 facts presented. "For example, in most instances, the granting of a

1 mortgage or security interest in the debtor's property is  
2 voluntary. . . . At the other end of the extreme, a payment to a  
3 creditor to obtain the release of a wage garnishment is an involuntary  
4 transfer." 4 Collier on Bankruptcy ¶ 522.12[2][b], at 522-114 (Alan N.  
5 Resnick & Henry J. Sommer eds, 16th ed. 2014). See, e.g., Via v.  
6 Colonial American Nat'l Bank (In re Via), 107 B.R. 91, 94-95 (Bankr. W.D.  
7 Va. (1989) (transfer involuntary where debtor responded to a garnishment  
8 notice by obtaining a loan to pay the creditor in order to avoid  
9 garnishment). Comparing the threat of garnishment to the threat of  
10 incarceration, if anything, the essential involuntariness of the transfer  
11 in this case is even stronger than in In re Via.

12 My ultimate conclusion is that the Debtors' prepetition  
13 transfer of the Deposit to the Washington County Sheriff's office in lieu  
14 of a bail bond to keep Mr. Yarber out of jail was not a voluntary  
15 transfer for purposes of § 522(g)(1)(A), and I overrule the Objection.  
16 The court will prepare the order overruling the Objection for the reasons  
17 stated in this Memorandum Opinion.

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19 cc: Jacob D. Braunstein, Esq.  
20 Stephen P. Arnot, Trustee  
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